

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Prathima Price, Esq., SBN 321378
Dennis Price, Esq., SBN 279082
Tehniat Zaman, Esq., SBN 321557
100 Pine St., Ste 1250
San Francisco, CA 94111
(858) 375-7385; (888) 422-5191 fax
tehnitz@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Sundowner Inn LLC, a California
Limited Liability Company

Defendants.

Case No. 3:22-cv-00624-VC

**First Amended Complaint For
Damages And Injunctive Relief
For Violations Of:** Americans
With Disabilities Act; Unruh Civil
Rights Act

Plaintiff Scott Johnson complains of Sundowner Inn LLC, a California
Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
level C-5 quadriplegic. He cannot walk and has significant manual dexterity
impairments. He uses a wheelchair for mobility and has a specially equipped
van.

2. Defendant Sundowner Inn LLC owned the real property located at or
about 504 Ross Dr., Sunnyvale, California, between February 2020 and

1 December 2020.

2 3. Defendant Sundowner Inn LLC owns the real property located at or
3 about 504 Ross Dr., Sunnyvale, California, currently.

4 4. Defendant Sundowner Inn LLC owned Days Inn located at or about 504
5 Ross Dr., Sunnyvale, California, between February 2021 and December
6 2021.

7 5. Defendant Sundowner Inn LLC owns Days Inn (“Motel”) located at or
8 about 504 Ross Dr., Sunnyvale, California, currently.

9 6. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their
11 relative responsibilities in causing the access violations herein complained of,
12 and alleges a joint venture and common enterprise by all such Defendants.
13 Plaintiff is informed and believes that each of the Defendants herein is
14 responsible in some capacity for the events herein alleged, or is a necessary
15 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
16 the true names, capacities, connections, and responsibilities of the Defendants
17 are ascertained.

18
19 **JURISDICTION & VENUE:**

20 7. The Court has subject matter jurisdiction over the action pursuant to 28
21 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
22 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

23 8. Pursuant to supplemental jurisdiction, an attendant and related cause
24 of action, arising from the same nucleus of operative facts and arising out of
25 the same transactions, is also brought under California’s Unruh Civil Rights
26 Act, which act expressly incorporates the Americans with Disabilities Act.

27 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
28 founded on the fact that the real property which is the subject of this action is

1 located in this district and that Plaintiff's cause of action arose in this district.

2
3 **FACTUAL ALLEGATIONS:**

4 10. Plaintiff went to the Motel in February 2020, October 2021, November
5 2021, and December 2021 with the intention to avail himself of its goods or
6 services motivated in part to determine if the defendants comply with the
7 disability access laws.

8 11. The Motel is a facility open to the public, a place of public
9 accommodation, and a business establishment.

10 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
11 to provide wheelchair accessible guestrooms in conformance with the ADA
12 Standards as it relates to wheelchair users like the plaintiff.

13 13. The Motel provides guestrooms to its customers but fails to provide
14 wheelchair accessible guestrooms.

15 14. A few problems that plaintiff encountered was that the entrance at the
16 guestroom required plaintiff to navigate a threshold of about two inches in
17 height. In fact, the two guestrooms that he looked at had thresholds of about
18 two inches in height. Additionally, the peep hole, security chain lock, rod for
19 hanging clothes, iron and restroom mirror were too high. Finally, the plumbing
20 underneath the guestroom restroom sink was not properly wrapped to protect
21 against burning contact.

22 15. Plaintiff believes that there are other features of the guestrooms that
23 likely fail to comply with the ADA Standards and seeks to have fully compliant
24 guestrooms for wheelchair users.

25 16. On information and belief, the defendants currently fail to provide
26 wheelchair accessible guestrooms.

27 17. Additionally, on the dates of the plaintiff's visits, the defendants failed
28 to provide wheelchair accessible transaction counters in conformance with the

1 ADA Standards as it relates to wheelchair users like the plaintiff.

2 18. The Motel provides transaction counters to its customers but fails to
3 provide wheelchair accessible transaction counters.

4 19. One problem that plaintiff encountered was that the transaction
5 counter was too high. There was no counter that was 36 inches or less in height
6 that plaintiff could use for his transactions.

7 20. Plaintiff believes that there are other features of the transaction
8 counters that likely fail to comply with the ADA Standards and seeks to have
9 fully compliant transaction counters for wheelchair users.

10 21. On information and belief, the defendants currently fail to provide
11 wheelchair accessible transaction counters.

12 22. The failure to provide accessible facilities created difficulty and
13 discomfort for the Plaintiff.

14 23. These barriers relate to and impact the plaintiff's disability. Plaintiff
15 personally encountered these barriers.

16 24. As a wheelchair user, the plaintiff benefits from and is entitled to use
17 wheelchair accessible facilities. By failing to provide accessible facilities, the
18 defendants denied the plaintiff full and equal access.

19 25. The defendants have failed to maintain in working and useable
20 conditions those features required to provide ready access to persons with
21 disabilities.

22 26. The barriers identified above are easily removed without much
23 difficulty or expense. They are the types of barriers identified by the
24 Department of Justice as presumably readily achievable to remove and, in fact,
25 these barriers are readily achievable to remove. Moreover, there are numerous
26 alternative accommodations that could be made to provide a greater level of
27 access if complete removal were not achievable.

28 27. Plaintiff will return to the Motel to avail himself of its goods or services

1 and to determine compliance with the disability access laws once it is
2 represented to him that the Motel and its facilities are accessible. Plaintiff is
3 currently deterred from doing so because of his knowledge of the existing
4 barriers and his uncertainty about the existence of yet other barriers on the
5 site. If the barriers are not removed, the plaintiff will face unlawful and
6 discriminatory barriers again.

7 28. Given the obvious and blatant nature of the barriers and violations
8 alleged herein, the plaintiff alleges, on information and belief, that there are
9 other violations and barriers on the site that relate to his disability. Plaintiff will
10 amend the complaint, to provide proper notice regarding the scope of this
11 lawsuit, once he conducts a site inspection. However, please be on notice that
12 the plaintiff seeks to have all barriers related to his disability remedied. See
13 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
14 encounters one barrier at a site, he can sue to have all barriers that relate to his
15 disability removed regardless of whether he personally encountered them).

16
17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
18 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint.

23 30. Under the ADA, it is an act of discrimination to fail to ensure that the
24 privileges, advantages, accommodations, facilities, goods and services of any
25 place of public accommodation is offered on a full and equal basis by anyone
26 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
27 § 12182(a). Discrimination is defined, inter alia, as follows:

28 a. A failure to make reasonable modifications in policies, practices,

1 or procedures, when such modifications are necessary to afford
2 goods, services, facilities, privileges, advantages, or
3 accommodations to individuals with disabilities, unless the
4 accommodation would work a fundamental alteration of those
5 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

6 b. A failure to remove architectural barriers where such removal is
7 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
8 defined by reference to the ADA Standards.

9 c. A failure to make alterations in such a manner that, to the
10 maximum extent feasible, the altered portions of the facility are
11 readily accessible to and usable by individuals with disabilities,
12 including individuals who use wheelchairs or to ensure that, to the
13 maximum extent feasible, the path of travel to the altered area and
14 the bathrooms, telephones, and drinking fountains serving the
15 altered area, are readily accessible to and usable by individuals
16 with disabilities. 42 U.S.C. § 12183(a)(2).

17 31. When a business provides guestrooms, it must provide accessible
18 guestrooms.

19 32. Here, accessible guestrooms have not been provided in conformance
20 with the ADA Standards.

21 33. When a business provides transaction counters, it must provide
22 accessible transaction counters.

23 34. Here, accessible transaction counters have not been provided in
24 conformance with the ADA Standards.

25 35. The Safe Harbor provisions of the 2010 Standards are not applicable
26 here because the conditions challenged in this lawsuit do not comply with the
27 1991 Standards.

28 36. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 37. Here, the failure to ensure that the accessible facilities were available
4 and ready to be used by the plaintiff is a violation of the law.

5
6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
8 Code § 51-53.)

9 38. Plaintiff repleads and incorporates by reference, as if fully set forth
10 again herein, the allegations contained in all prior paragraphs of this
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
12 that persons with disabilities are entitled to full and equal accommodations,
13 advantages, facilities, privileges, or services in all business establishment of
14 every kind whatsoever within the jurisdiction of the State of California. Cal.
15 Civ. Code §51(b).

16 39. The Unruh Act provides that a violation of the ADA is a violation of the
17 Unruh Act. Cal. Civ. Code, § 51(f).

18 40. Defendants’ acts and omissions, as herein alleged, have violated the
19 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
20 rights to full and equal use of the accommodations, advantages, facilities,
21 privileges, or services offered.

22 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
23 discomfort or embarrassment for the plaintiff, the defendants are also each
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
25 (c).)

26 42. Although the plaintiff encountered frustration and difficulty by facing
27 discriminatory barriers, even manifesting itself with minor and fleeting
28 physical symptoms, the plaintiff does not value this very modest physical

1 personal injury greater than the amount of the statutory damages.

2
3 **PRAYER:**

4 Wherefore, Plaintiff prays that this Court award damages and provide
5 relief as follows:

6 1. For injunctive relief, compelling Defendants to comply with the
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
8 plaintiff is not invoking section 55 of the California Civil Code and is not
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. For equitable nominal damages for violation of the ADA. See
11 *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021) and any other equitable relief
12 the Court sees fit to grant.

13 3. Damages under the Unruh Civil Rights Act, which provides for actual
14 damages and a statutory minimum of \$4,000 for each offense.

15 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
16 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

17
18 Dated: June 09, 2022

CENTER FOR DISABILITY ACCESS

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20 By: /s/ Tehniat Zaman
21 Tehniat Zaman, Esq.
22 Attorney for plaintiff
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